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MCDERMOTT, WILL & EMERY

## facsimile transmittal

To: Initial Patent Examination Division Fax: 703-308-7751

From: Robert L. Price Date: 6/13/2002

Re: U.S. Serial No. 09/776,910 Pages: 5

CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Forwarded herewith is a copy of a Petition to Withdraw the Notice of Abandonment or in the Alternative Petition to Revive Under 37 CFR 1.137(b) filed on April 29, 2002; a copy of the Notice of Abandonment mailed April 15, 2002 and a copy of our date stamp receipt card evidencing the filing. The documents have been corrected to show the correct Serial Number of this Application as 09/776,910. We understand the file is in Group 1600. Please match these papers with the file. Regards.

Docket No.: 50179-087

**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of

Robyn Joyce RUSSELL, et al.

Serial No.: 09/776,210<sup>910</sup> (corrected) : Group Art Unit: 1652

Filed: February 06, 2001

Examiner: Robyn Joyce Russell

For: MALATHION CARBOXYLESTERASE

**PETITION TO WITHDRAW THE NOTICE OF ABANDONMENT OR IN THE  
ALTERNATIVE PETITION TO REVIVE UNDER 37 CFR 1.137(b)**Commissioner for Patents  
Washington, DC 20231

Sir:

Applicants note the Notice of Abandonment under 37 CFR 1.53(f) or (g) issued in the above-identified application.

This application was held to be abandoned on the ground that Applicants failed to file a complete, timely and proper reply to the Notice to File Corrected Application Papers mailed April 20, 2001. The Notice to File Corrected Application Papers required a statement that the content of the sequence listing recorded in computer readable form be identical to the written sequence listing; that a copy of the sequence listing in computer readable form be provided, and an abstract be submitted, was received by Applicant's attorneys on April 24, 2001.

A Response was filed on May 17, 2001 which addressed the sequence listing requirement but failed to supply the Abstract for the application. This was an oversight and was only brought to the attention of Applicants' attorneys on December 31, 2001

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09/776,210

when a Notice of Incomplete Reply (Nonprovisional) mailed December 21, 2001 was received. A Response to this Notice was promptly filed on January 8, 2002 to present an Abstract for the application. It is respectfully pointed out that the Notice of Incomplete Reply (Nonprovisional) was mailed two months after the statutory time period had expired to reply to the Notice to File Corrected Application Papers mailed April 20, 2001. Therefore, at the time the Patent Office issued the Notice of Incomplete Reply (Nonprovisional) the application would in fact already been abandoned since the statutory response date had expired on October 20, 2001 (the six month statutory date).

Further, Applicants submit that neither 37 CFR 1.53(f) or (g) authorizes the U.S. Patent and Trademark Office to hold an application abandoned for failure to supply an abstract to the application. 37 CFR 1.53(f) refers only to providing an oath or declaration, basic filing fee, or correspondence address. Nothing is said about an abstract. Further, 37 CFR 1.53(g) concerns only provisional applications and the requirement is to provide the filing fee and correspondence address.

Applicant submits that these rules do not provide any authority to the U.S. Patent and Trademark Office to hold an application abandoned for failure to provide an abstract on the present facts. Therefore, for these reasons, the Notice of Abandonment should be withdrawn.

If the U.S. Patent and Trademark Office had timely responded to our Reply of May 17, 2001, there would have been time to correct this oversight within the statutory period. For that reason, it is requested that this abandonment be rescinded, that our Response to Notice of Incomplete Reply filed on January 8, 2002 be entered and made of record and the application be returned to pending status. The Petition Fee of \$130.00 is

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authorized to be charged to Deposit Account 500417. If, however, after review of the facts, it is deemed that the application will maintain abandonment status, the undersign Petitions for revival of this application as abandoned unintentionally under 37 CFR 1.137(b).

The complete period of abandonment of this application was unintentional, and a proper and complete reply was filed on January 8, 2002 and acknowledged in the Notice of Abandonment received April 19, 2002 as being filed, applicants respectfully petition for revival of the application, and authorize the required petition fee of \$1,280.00 to be charged to Deposit Account No. 500417. It is requested that the Abstract filed on January 8, 2002 be entered and the application be returned to pending status.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

MCDERMOTT, WILL & EMERY



Robert L. Price

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**Date: April 29, 2002**



## UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
WWW.USPTO.GOV

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY DOCKET NO./TITLE
09/776,910	02/06/2001	Robyn Joyce Russell	50179-087

CONFIRMATION NO. 3696

ABANDONMENT/TERMINATION  
LETTER

\*OC000000007865841\*

McDERMOTT, WILL & EMERY  
600 13th Street, N.W.  
Washington, DC 20005-3096

Date Mailed: 04/15/2002

## NOTICE OF ABANDONMENT UNDER 37 CFR 1.53 (f) OR (g)

The above-identified application is abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on 04/20/2001.

- The reply received on 01/08/2002 was untimely.

A petition to the Commissioner under 37 CFR 1.137 may be filed requesting that the application be revived.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of **UNAVOIDABLE DELAY** must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by: (1) an adequate showing of the cause of unavoidable delay; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(l); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of **UNINTENTIONAL DELAY** must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Any questions concerning petitions to revive should be directed to "Office of Petitions" at (703) 305-9282.

*A copy of this notice **MUST** be returned with the reply.*

Customer Service Center  
Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

Applicant: Robyn Joyce RUSSELL, et alDocket No. 50179-087Title: MALATHION CARBOXYLESTERASESerial/Reg./Patent No. 091776,240 910 (corrected)Date Sent: 04/29/02☒ Hand Carried☐ Fax☐ Electronic☐ Cert. of Mailing☐ Express Mail No. \_\_\_\_\_☐ Transmittal Letter☐ Utility☐ Design☐ Cont.☐ CIP☐ Div.☐ PCT☐ CPA☐ RCE☐ Prov☐ Other: \_\_\_\_\_

pages of Specification

pages of Claims

pages of Abstract

pages of Formal/Informal Drawings

☐ Small Entity☐ Large Entity☐ Declaration/Power of Attorney☐ Recordation of Assignment/Security Agreement☐ Information Disclosure Statement

Form PTO 1449

copies of cited references

☐ Preliminary Amendment☐ Response to Missing Parts Notice☐ Resp. to Notice to Correct App. Papers☐ Certified Copy of Priority Doc.☐ Claim for Convention Priority☐ Response/Amendment to Office Action of \_\_\_\_\_☐ Request for \_\_\_\_\_ month Extension of Time☒ Charge Deposit Acct. 500417 \$

130.00

Adv. Int.

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Type #

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Secy or PL

K Bell

CMS Descrp: \_\_\_\_\_

THE PATENT AND TRADE MARK OFFICE DATE STAMPED HEREON IS ACKNOWLEDGEMENT THAT THE ITEMS CHECKED ABOVE WERE RECEIVED BY THE PTO ON THE DATE STAMPED.



- ☐ Letter submitting \_\_\_\_\_ pages of drawings
- ☐ Req. for Approval of Drawing Amendment's
- ☐ Req. for Oral Hearing
- ☐ Not. of Appeal ☐ Appeal Brief ☐ Reply Brief
- ☐ Rule 312 Amendment letter
- ☐ Req. for Acknowledgment of Cited Art
- ☐ Issue Fee
- ☐ Publication Fee
- ☐ Req. for Certificate of Correction
- ☐ Maintenance Fee for \_\_\_\_\_ years after grant
- ☐ Fee Address Indication Form
- ☐ Terminal Disclaimer
- ☐ Petition to Commissioner
- ☐ Status Inquiry
- ☒ Other Petition To Withdraw The Notice Of Abandonment Or In The Alternative Petition To Renew Under 37 CFR 1.137(b)